MT LEGISLATIVE HISTORY

Chapter 318 1987

Bill (H) 141 S _____ Original bill & hist. ✓C

H. Committee on _____			(S.) Committee on _____		
Hearing Date(s)	FEB26	✓C	Hearing Date(s)	MAR2	✓C
	FEB27	✓C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	FEB27	✓C		MAR3	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 141

INTRODUCED BY BARDANOUVE

IN THE HOUSE

JANUARY 12, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 27, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 28, 1987	PRINTING REPORT.
JANUARY 29, 1987	SECOND READING, DO PASS.
JANUARY 30, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 88; NOES, 9.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 18, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 21, 1987	SECOND READING, CONCURRED IN.
MARCH 24, 1987	THIRD READING, CONCURRED IN. AYES, 44; NOES, 5.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 24, 1987	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

INTRODUCED BY HB BILL NO. 141

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A FEE FOR FILING A MOTION FOR SUBSTITUTION OF A DISTRICT JUDGE IN A CIVIL CASE; REQUIRING MONEY FROM THE FEE TO BE DEPOSITED IN THE STATE GENERAL FUND; AND AMENDING SECTIONS 19-5-404 AND 25-1-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. (Temporary) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, $25; for filing a complaint in intervention, from the intervenor, $25; and for filing a petition for dissolution of marriage, an additional fee of $30;

(b) from each defendant or respondent, on his appearance, $15;

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(d) for preparing copies of papers on file in his office, 25 cents per page;

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(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate;

(o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $35;

(p) for filing a declaration of marriage without solemnization, $30;

(q) for filing a motion for substitution of a judge,

 INTRODUCED BILL HB-141

$100.

(2) Except as provided in subsections (3) ~~and (4)~~ through (5), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the additional fee for filing a petition for dissolution of marriage, $25 must be deposited in the state general fund and $5 must be deposited in the children's trust fund account established by 41-3-702.

(5) The fee for filing a motion for substitution of a judge as provided in subsection (1)(q) must be deposited in the state general fund.

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Section 2. Section 19-5-404, MCA, is amended to read:

"19-5-404. Contributions by the state. The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of ~~the~~ certain filing fees ~~collected~~ as required under 25-1-201 to the state, which shall first deposit in the fund an amount equal to 31% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB141, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act creating a fee for filing a motion for substitution of a district judge in a civil case; requiring money from the fee to be deposited in the state general fund; and amending Sections 19-5-404 and 25-1-201, MCA.

ASSUMPTIONS:
1. The 171 district court judge substitutions in FY86 would be consistent with FY88 and FY89.
2. FY86 travel costs of $19,784 associated with 171 substitutions would be the same in FY88 and FY89.
3. The effect of $100 fee on requests for district court judge substitutions is unknown.

FISCAL IMPACT:

Revenue:	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
State General Fund	-0-	$11,628	$11,628	-0-	$11,628	$11,628
Local Gov't General Fund	-0-	5,472	5,472	-0-	5,472	5,472
Total	-0-	$17,100	$17,100	-0-	$17,100	$17,100
Costs:						
State General Fund	$19,784	$19,784	-0-	$19,784	$19,784	-0-

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:
$5,472 annual revenue to county.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:
N/A

David L. Hunter DATE 1/19/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE Jan 19
FRANCIS BARDANOUVE, PRIMARY SPONSRO

Fiscal Note for HB141, as introduced.

HB-141

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 141

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"25-10-405. Governmental entities not required to prepay fees. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the

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(5) The fee for filing a motion for substitution of a judge as provided in subsection (1)(q) must be deposited in the state general fund."

Section 2. Section 19-5-404, MCA, is amended to read:

"19-5-404. Contributions by the state. The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of the certain filing fees ~~collected~~ as required under 25-1-201 to the state, which shall first deposit in the fund an amount equal to 31% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund."

SECTION 3. SECTION 25-10-405, MCA, IS AMENDED TO READ:

"25-10-405. Governmental entities not required to prepay fees. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the

fee under 25-1-201(1)(q) for filing a motion for substitution of a judge."

-End-

S-32
9-85

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
81	1/5/87	1/13/87	1/13/87			1/13/87					
82	1/8/87	1/13/87	1/16/87			1/16/87					
89		2/12/87	failed to meet deadline								
95	1/7/87	1/15/87	1/15/87	1/15/87							
110	1/8/87	2/4/87	2/14/87		2/14/87						
111	1/8/87	2/4/87	2/14/87		2/14/87						
112	1/8/87	1/28/87	tabled 2/14/87								
120	1/9/87	1/14/87	1/22/87	tabled							
123	1/9/87	1/15/87	2/14/87			2/14/87					
127		2/16/87	failed to meet deadline								
134	1/9/87	1/15/87	1/15/87			1/15/87					
135	1/10/87	1/16/87	1/23/87	(tabled 2/20/87)							
139	1/12/87	1/19/87	1/19/87			1/19/87					
141	1/12/87	1/26/87	1/27/87			1/27/87					

: a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 26, 1987

The meeting of the Judiciary Committee was called to order in room 312 D of the Capitol on January 26, 1987 at 8:00 a.m. by Chairman Earl Lory.

ROLL CALL: All members present with the exception of Rep. Fritz Daily who was excused.

HOUSE BILL NO. 141:

REP. FRANCIS BARDANOUVE, district #16, sponsor, explained that this bill raises money to meet expenses caused by the filing of motions for substitution which disqualify district judges. This is a procedure in which within ten days of assignment of a judge, a party may ask that a new judge be assigned to the case. This bill would require a filing fee of $100.00 for such a motion. He further explained that the fiscal note for this bill is not correct. Rep. Bardanouve is adding on a subsection five (5) to this bill to include that the $100.00 filing fee will all go to the state fund. At the current time, 32% of collected fees go to the county general fund and 68% go to the general fund.

SUPPORTERS:

Henry Loble, District Judge, Helena, submitted written testimony (Exhibit A). He stated that calling in a district judge often necessitates miles of travel and other expenses because the state of Montana is so large. This bill would help meet expenses caused by parties filing substitution motions and would discourage the filing of frivolous motions. Judge Loble also submitted copies of part 8 and 10 of the Supreme Court Rule. (Exhibit B).

Thomas A. Olson, District Judge, representing Mt. Judges Association, submitted written testimony (Exhibit C). District courts call the procedure "substitution of judges" and this bill imposes a filing fee of $100.00 for use of this procedure. In civil cases, any party may do this twice; in a criminal case there is only one substitution allowed. The Mt. Judges Association has petitioned the Supreme Court to streamline the procedure and to eliminate chances for abuse. A $100.00 filing fee would cut down on

frivolous use and give the state a way to off-set the high costs of this privilege.

Thomas Honzel, District Court Judge, Helena, went on record in support of this bill.

Roger Tippy, Attorney, Helena, favors this bill if it went on to amend the section exempting state agencies from paying court fees. He submitted an amendment to Section 3, Section 25-10-405 (Exhibit D). He feels state agencies should be on an equal footing with private litigants.

Karl England, Montana Trial Lawyers Association, generally supports the idea of creating a fee for filing a motion for substitution of a judge. A point he wants to raise is that the higher the fee, the higher the number of people who may not be able to afford to have the use of a right that others with more money will have. $100.00 might be too high of a fee. This would be the highest fee charged in the statutes.

NO OPPONENTS

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 141:

Rep. Rapp-Svrcek asked Rep. Bardanouve why all the money would go into the state general fund. The amount of money would be minimal and to divide it in too many directions would not be cost effective. Rep. Rapp-Svrcek asked John MacMaster if it would be possible to amend this bill with the suggestion of the Chief Justice. He answered that you would not be changing the original purpose of the bill but would be adding another purpose to it.

Rep. Addy stated to Judge Loble that if attorneys had to pay $100.00 per case they would not be challenging the judges so often but that it often turns into a judge taking this action personal. Judge Loble explained that this procedure is not a personal matter. He does not think it should result in a grudge. He sees this procedure as just a money saving process.

Rep. Hercer questioned Rep. Bardanouve on why a fee is charged for judges that are being disqualified for no reason and judges who are being disqualified for reason. Aren't the costs the same for a judge's travel and expenses?

Rep. Bardanouve answered that in the eye of justice a citizen has the right to disqualify a judge. If he is doing it just to do it, it is a luxury we cannot afford. The judges feel this fee is fair.

Rep. Eudaily asked Judge Loble if there is a special provision in the law for a disqualified reason that is not stated in this bill? Judge Loble stated that it is in a statute referred to in Exhibit B. It sets out the reasons for disqualification of a judge but it is not a motion for substitution.

Rep. Bardanouve closed the hearing.

HOUSE BILL NO. 235:

Rep. Addy, District # 94, sponsor of this bill, intends to clarify procedures and to have it easier or clearer to decide how to go about accomplishing something that the statutes has always said we should be able to do. If two people get arrested, an attorney wants to try the bad actor first. The accomplice decides to refuse to testify by standing on his fifth amendment rights because he knows what ever he says can and will be used against him. An attorney will give immunity to the small fish so he can compel him to testify against the big fish. By giving immunity for anything they say they no longer have a right against self incrimination and they can be compelled to testify. If they refuse to testify, this bill provides the procedure to be followed so they can be held in contempt of court.

SUPPORTERS:

Mike McGraff, County of Lewis and Clark Attorney and Chairman for the Legislative Committee for the Montana County Attorneys Association, stated this bill was submitted at our request by Rep. Addy and it provides a procedure when a witness refuses to testify after having been granted immunity. There are two types of immunity granted in the state of Montana. One is called use-immunity, which is immunity that a prosecutor will not use any statements given against you. The second immunity is called transactual immunity. It says the prosecutor will not prosecute you for anything having to do with this transaction. Procedures

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan 26 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)		✓	✓
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

EXHIBIT E
DATE 1-26-87
HB # 141

WITNESS STATEMENT

NAME District Judge Henry Loble BILL NO. 141

ADDRESS County Courthouse Helena DATE 1-26-87

WHOM DO YOU REPRESENT? MT Judges' Assn

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: HB 141 would raise money to meet expenses caused by the filing of motions for substitution which disqualify District Judges. This often necessitates calling in an outside judge with resulting travel & other expenses. The bill would require a filing fee of $100 for each a motion. Probably the bill would also discourage the filing of frivolous motions.

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide such information to the legislature upon request;

(3) recommend to the supreme court improvements in the judiciary; and

(4) perform such other duties as the supreme court may assign.

History: En. 82-512 by Sec. 3, Ch. 396, L. 1977; R.C.M. 1947, 82-512.

3-1-703. Cooperation of court officers. All court officers, including clerks of district courts, shall comply with requests made by the court administrator for information and statistical and financial data bearing on the business transacted by the courts.

History: En. 82-513 by Sec. 4, Ch. 396, L. 1977; R.C.M. 1947, 82-513.

Part 8

Disqualification and Substitution of Judges Supreme Court Rule

3-1-801. Superseded. Sup. Ct. Order dated June 29, 1981.

History: En. Sup. Ct. Ord. dated Dec. 29, 1976; 34 St. Rep. 26; superseded, Sup. Ct. Ord. dated June 29, 1981.

Compiler's Comments

Superseded Sections — Effective Date: Subsection 9 of the Supreme Court's order dated Dec. 29, 1976, provided in part: "This rule supersedes and is to be used to the exclusion of sections 93-901, 93-2906(4), 93-2907, 93-6602(2), 95-1709, and 95-2010, R.C.M. 1947.

This rule shall be effective on March 1, 1977, it to apply to all actions filed on or after that date."

3-1-802. Disqualification and substitution of judges — all courts.

DISQUALIFICATION OF JUDGES

Any justice, judge, or justice of the peace must not sit or act in any action or proceeding:

1. To which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;

3. When he has been attorney or counsel in the action or proceeding for any party or when he rendered or made the judgment, order or decision appealed from.

SUBSTITUTION OF JUDGES — PEREMPTORY CHALLENGES

Peremptory challenges shall apply only to District Court proceedings.

A motion for a substitution of a judge may be made by any party to a District Court proceeding. In a civil case, each adverse party is entitled to two substitutions of a judge. In a criminal case, the state and each defendant is entitled to one substitution of a judge.

A motion for substitution of a judge shall be made by filing a written motion for substitution reading as follows:

"The undersigned hereby moves for substitution of another judge for Judge _____ in this cause." The clerk of court shall immediately give notice thereof to all parties and to the judge named in the motion. Upon filing this notice, the judge named in the motion shall have no further power to act in

the cause other than to call in another judge, which he shall do forthwith, and to set the calendar.

The first district judge disqualified shall have the duty of calling in all subsequent district judges.

When a case is filed in a multi-judge district, it shall be the duty of the clerk of court to stamp the name of the judge to which the case is assigned on the face of the summons, order to show cause, or information and all copies thereof.

Whenever a judge is assigned a case for ten consecutive days and the attorneys of record on both sides have knowledge of the assignment for that period of time, and if during this time no motion for substitution of a judge is filed against him, all rights to move for substitution of a judge shall be deemed waived by all parties, unless the presiding judge disqualifies himself thereafter in which case the right to move for substitution of a judge is reinstated and the ten-day period starts running anew.

Whenever an acceptance of jurisdiction is filed by a new judge, it shall be the duty of the clerk of court to mail a copy of the acceptance of jurisdiction to the original judge who first had jurisdiction of the case, and a copy by certified mail with return receipt requested to each attorney of record. Service to an attorney may be made by delivery of a copy personally to the attorney, or by obtaining a written receipt from the attorney. Proof of service shall be stapled to the acceptance of jurisdiction in the file. The clerk of court shall contact the new judge accepting jurisdiction and request that judge to communicate with the judge having jurisdiction in the first instance, so that calendaring can be expeditiously handled.

When a new trial is ordered in any case, whether by order of the District Court or the Supreme Court, each adverse party shall be entitled to file one motion for substitution of a judge in the manner provided herein, whether or not that party has previously filed motions for substitution of a judge. Such motions must be filed:

a. If the new trial has been ordered by the District Court, within ten days after the time for appealing the order has elapsed.

b. If the new trial has been ordered by the Supreme Court, within ten days after notice of receipt of the remittitur has been received by the respective parties from the clerk of the District Court.

DISQUALIFICATION FOR CAUSE

This section shall apply to all District Court judges, justices of the peace, municipal court judges and to all judges acting as a Small Claims Court. All references to judge are meant to include a District Court judge, a justice of the peace, a municipal judge and a judge presiding under the Small Claims Act.

Whenever a party to any proceeding in any court makes and files a timely and sufficient affidavit that a judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein.

In the case of a district judge, another district judge shall be assigned by the chief justice of the Supreme Court to hear such disqualification proceedings. If an affidavit is against a justice of the peace, municipal judge or a judge presiding under the Small Claims Act, any district judge may appoint

another justice of the peace or municipal judge to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than twenty days before the original date of trial, or good cause shall be shown for failure to file it within such time. It shall be accompanied by a certificate of counsel of record stating that it has been made in good faith.

DIRECT CONTEMPT OF COURT:

None of the provisions of this rule shall apply to any person in any cause involving a direct contempt of court.

INDIRECT CONTEMPT OF COURT:

When a person is charged in a District Court with indirect contempt of court, he shall be entitled to file one motion for substitution of a judge in the manner provided herein, whether or not that party has previously filed motions for substitution of a judge. Such a motion must be filed within ten days of the charge of indirect contempt of court. In that event, the judge of the court against which the contempt is alleged to have been committed shall notify the chief justice of the Supreme Court who shall appoint another district judge to hear and decide the charge.

History: **En. Sup. Ct. Ord. dated June 29, 1981.**

Compiler's Comments

Former Rule Superseded — Effective Date: Supreme Court Order dated June 29, 1981, provided, in part, as follows:

"By the authority of Article VII, Section 2, of the 1972 Montana Constitution, this rule supersedes and is to be used to the exclusion of the rule on disqualification and substitution of judges adopted by Supreme Court Order dated December 29, 1976, and published as section 3-[illegible]801, MCA.

"This rule shall take effect on July 1, 1981."

Effect of Publication: Section 2, Ch. 1, L. 1979, which adopted the MCA, provided that publication of a Supreme Court Rule is done for the benefit of code users. The publication of this section should not be construed as a legislative attempt to readopt or promulgate the rule.

Cross-References

District Court presided over by Judge of other district, 3-5-111.

Multijudge districts, 3-5-403.

Municipal Court Judge pro tem, 3-6-204.

Disqualification of Water Judge or master, 3-7-402.

When Acting Justice called in, 3-10-231.

Expenses of Acting Justice, 3-10-234.

When substitute for City Judge called in, 3-11-203.

Procedure, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Part 9 reserved

Part 10

Judicial Nomination Commission

3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court. The commission shall be composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

EXHIBIT C
DATE 1-26-87
HB #141

WITNESS STATEMENT

NAME Judge Thomas A. Olson BILL NO. H-141

ADDRESS 615 S. 16th, Bozeman, MT 59715 DATE 1-26-87

WHOM DO YOU REPRESENT? Montana Judges Association

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This bill would impose a filing fee of $100 for use of a procedure known in Montana District courts — called "substitution of judges." Within 10 days of assignment of a judge, a party may ask that a new judge be assigned to the case, no questions asked. In civil cases, any party may do this twice; in a criminal case there is only one substitution allowed.

The Montana Judges Association has petitioned the Supreme Court to streamline the procedure and to eliminate chances for abuse. We hope a $100 filing fee would cut down on frivilous use of the procedure, and give the State

ROGER TIPPY
Attorney At Law
BOX 543
CAPITOL 1 CENTER
208 N. MONTANA
HELENA, MONTANA 59624

(406) 442-4451

EXHIBIT D
DATE 1-26-87
HB # 141

January 19, 1987

House Judiciary Committee
Montana Legislature

Re: House Bill 141

Dear Mr. Chairman and Committee Members:

As an attorney practicing primarily in the field of administrative law here in Helena, I frequently litigate against agencies of state government. I have never yet moved to substitute the district judge who draws a case I appear on in the district court. However, there are agencies of state government who substitute some of our judges regularly.

I would favor your bill if it went on to amend the section exempting state agencies from paying court fees, so that they were on an equal footing with private litigants. The section involved is 25-10-405, and the amendment would read as follows:

> Section 3. Section 25-10-405 is amended to read:
>
> 25-10-405. Government entities not required to prepay fees. The state, a county, a municipality, or an subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except that the state or an officer of the state in prosecuting or defending a civil action must pay the fee for filing a motion to substitute a judge required under 25-1-201(q).

Thank you for considering this amendment.

Sincerely,

ROGER TIPPY

EXHIBIT

Montana law to boat or water ski while intoxicated, the law lacks teeth.

HOUSE BILL NO. 326, Rep. Addy, District #94, sponsor, at request of the Department of Institutions. It clarifies a post sentencing procedure. The change in the law occurs on Pg. 3, line 10. It deals with if somebody has violated the terms of their probation or parole or suspended sentence and the court calls them back in to impose a sentence. This bill deals with credit they deserve to receive.

SUPPORTERS:

KURT CHISHOLM, Department of Institutions, supports this bill because the department has to face 25 to 30 cases a year where it is not clear whether the sentencing court intended the inmate or defendant to be credited with time served on the street while serving out the conditions of the deferred imposition of sentence or the suspended sentence. This causes much time and paperwork to get this matter clarified.

NO OPPONENTS

REP. ADDY closed the hearing.

EXECUTIVE ACTION

Action on HB #141.

REP MERCER moves DO PASS AS AMENDED. Rep. Gould moves Mr. Tippy's amendment DO PASS. Rep. Addy comments on the amendment stating it raises a question about the bill itself. If the bill is voted on, the amendment should be put on. Rep. Mercer favors the amendment. Rep. Addy stated he just really does not like the bill. Question was called by Rep. Giacometto and a voice vote was taken on the amendment. All members voted IN FAVOR of the amendment with the exception of Rep. Addy. Rep. Rapp-Svrcek moved to amend HB #141 further by deleting new subsection 5, on Pg. 6 in its entirety and delete the language on Pg. 5, lines 11 and 12 and the fees would distribute 32% into the General Fund to county and the remaining to the State Fund. Rep. Gaicometto asked Rep. Addy who pays for the substitution fee; the county or does it come out of the State Fund. Rep. Addy stated that with an administrative fee agency, it would come out of the agency's budget. The state pays the salary and the 5. ct. pays for the judges travel fund. Question was called on the amendment, that should we delete subsection 5. Voice vote was taken with seven members voting IN FAVOR and nine members voting AGAINST. The motion FAILED. Question was called on the original motion. Voice vote was

taken and all members voted IN FAVOR with the exception of Rep. Addy, Rep. Eudaily, Rep. Daily and Rep. Brown voting in opposition. HB #141 DO PASS AS AMENDED.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 11:15 a.m.

Earl Lory

REP. EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 27, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

JANUARY 27, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 141

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

Chairman

1. Title, line 7.
Strike: "AND"
Insert: ","

2. Title, line 8.
Following: "25-1-201,"
Insert: "AND 25-10-405,"

3. Page 6.
Following: line 17
Insert: "Section 3. Section 25-10-405, MCA, is amended to read:

"25-10-405. Governmental entities not required to prepay fees. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(q) for filing a motion for substitution of a judge." "

FIRST WHITE

_____ reading copy (_____)
color

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT-
HB0079	1/28	2/12		CONCUR		3/4
BROWN, JAN			ALLOW DOR TO REQUIRE HEALTH COVERAGE WHEN CHILD SUPPORT IS BEING ENFORCED			
HB0081	1/21	2/12		CONCUR AS AMENDED		3/4
BROWN, JAN			CLARIFY THAT ADMIN. SUPPORT ORDER OF DOR MAY NOT BE RETROACTIVELY MODIFIED			
HB0082	1/28	2/12		CONCUR		3/4
BROWN, JAN			RIGHTS OF DOR AND RECIPIENTS OF PUBLIC ASSISTANCE AS TO ASSIGNED SUPPORT			
HB0095	1/22	2/10		ADVERSE REPORT		3/5
ADDY, KELLY			ELIMINATE ANNUAL ACCOUNTING BY GUARDIANS AND CONSERVATORS			
HB0123	2/21	3/11		CONCUR AS AMENDED		3/11
BRADLEY, DOROTHY			HIRING RETIRED JUDGES OR QUALIFIED LAWYERS AS TEMPORARY JUDGES			
HB0134	1/22	2/10		CONCUR AS AMENDED		3/3
ADDY, KELLY			NO PUBLICATION REQUIRED WHEN PARENTS/GUARDIANS CONSENT TO NAME CHANGE			
HB0139	1/24	3/04		CONCUR		3/4
KOEHNKE, FRANCIS			MINIMUM COMPENSATION PROVISO IN SCENE OF INJURY GOOD SAMARITAN LAW			
HB0141	2/02	3/17		CONCUR		3/17
BARDANOUVE, FRANCIS			CREATE FEE FOR FILING MOTION FOR JUDGE SUBSTITUTION IN CIVIL CASES			
HB0146	3/02	3/24		CONCUR		3/27
SPAETH, GARY			IRRIGATION DITCH EMPLOYEE CIVIL SUIT IMMUNITY			
HB0163	2/16	3/09		CONCUR AS AMENDED		3/26
MERCER, JOHN			PROVIDING DEFINITION OF "UNDER THE INFLUENCE"; REPLACING EXISTING STANDARD			
HB0167	3/02	3/12		CONCUR AS AMENDED		3/24
GILBERT, BOB			LIMITING RIGHT TO RECOVER DAMAGES FOR EMOTIONAL OR MENTAL DISTRESS			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 17, 1987

The forty-fourth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 17, 1987, by the Chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present. Senator Halligan was excused, and appeared later in the meeting.

CONSIDERATION OF HOUSE BILL 141: Representative Francis Bardanouve, House District 16, introduced HB 141, which amends the statutes relating to district court filing fees and establishes a new fee of $100 for filing a motion for substitution of a judge. He explained when a judge is disqualified in a case it causes a lot of travel time for another judge to come and fill in. He felt this bill will help the expense of traveling in Montana for judges.

PROPONENTS: Henry Loble, District Judge, testified in support of the bill. (Exhibit 1)

Tom Honzel, District Judge, supported the bill. He explained the history of the proposed amended statute, which had to do with Marcus Daily, the Copper King, not liking the district judges in Silver Bow County because they were on the payroll of his rival.

Karl Englund, Montana Trial Lawyers Assn., pointed out the combination of this bill and Rep. Pistoria's bill will cost a person $275 instead of $25 for filing a petition for a court trial.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 141: There was none.

Representative Bardanouve closed the hearing on HB 141.

ACTION ON HOUSE BILL 141: Senator Crippen moved HB 141 BE CONCURRED IN. The motion CARRIED.

CONSIDERATION OF HOUSE BILL 277: Representative Mary Ellen Connelly, House District 8, said HB 277 authorizes counties to establish drinking and driving prevention programs and establishes a $50 driver's license reinstatement fee to fund the programs. She gave the committee some amendments to the bill because the House General Fund Committee put all the money for this program in the General Fund. She wanted to see it back in the Program Fund because she thought the money would get lost in the General Fund after two years, and the program might fall apart. (Exhibit 2) She also distributed a copy of a gray bill. (Exhibit 3) Representative Connelly presented the committee with two editorials on the DUI program (Exhibit 4 and 4A), and a fiscal note for HB 277. (Exhibit 5)

Al Goke, Highway Traffic Safety Department, supported the bill because it makes local people work on local projects. He said from 1984, alcohol related accidents has dropped 33%. He said there were 800 fewer injuries last year and 50 less deaths with alcohol related accidents in the state.

Jeannette S. Buchanan-Tawney, Missoula DUI Prevention, explained the letters she presented to the committee, which were from Missoula area people. (Exhibit 6)

Mickey Nelson, Lewis and Clark DUI Task Force, said he supported the bill because it brings all kinds of people together to fight a deadly issue. He said a DUI death is approximately a $200,000 impact to a community. He felt there would be no General Fund money used. He supported the Connelly amendments.

Rayleen Beaton, Stop DUI Task Force, said the task force was asked to come up with funds after the federal funds were gone. She said the funding is needed now because of the grandfathering clause for 19 year olds. She gave the committee a STOP Task Force Program pamphlet, together with testimony from William Ware, Chief of Police, Helena. (Exhibits 7 and 8)

Jess Adams, Great Falls Students Against Drunk Drivers, said the Cascade County SADD won a $20,000 scholarship from Readers Digest for having the best SADD campaign against drunk driving. He explained the Task Force gave the student group $900 for expenses for the campaign.

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 17

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE March 17, 1
BILL NO. HOUSE HB 14

STATEMENT OF DISTRICT JUDGE HENRY LOBLE IN SUPPORT OF HOUSE BILL 141 (BARDANOUVE) WHICH WOULD REQUIRE A $100 FEE FOR FILING A MOTION FOR SUBSTITUTION OF A DISTRICT JUDGE.

My name is Henry Loble. I am a District Judge of Montana's First District. My office is in the County Courthouse in Helena. I am appearing in support of House Bill 141 which would require a $100 fee for filing a motion for substitution of a district judge.

House Bill 141 passed third reading in the House by a vote of 88 to 9. It is supported by the Montana Judge's Association which is composed of all the district judges in the state and the justices of the Montana Supreme Court. The bill is also supported by the Montana Supreme Court. In his State of the Judiciary Message to the Legislature, Chief Justice Turnage stated:

> "Another piece of legislation that deserves your attention is one that imposes a $100 fee whenever an attorney calls for the substitution of a judge. This bill aims at recovering some of the costs involved when substitutions occur. The fee also would discourage frivolous substitutions which in many rural areas in our state may result in thousands of extra miles driven by judges and lost time behind the wheel of a car -- not to mention the inevitable delay in the litigation calendars of all judges involved."

The justices of the Supreme Court and the district judges of the state recommend this bill to you as one which will save money for the state. It is estimated that $20,000, or 20% of the total judicial travel budget, is spent on actual expenses caused by motions for substitution of judges. And this $20,000 does not include "windshield time" for traveling district judges. It is predicted that House Bill 141 may

raise $17,000 to offset the estimated $20,000. In addition, motions for substitution which are filed for purposes of delay or for frivolous reasons probably would not be filed at all if a $100 fee were imposed. This alone would achieve a substantial savings in judicial expense.

Section 3-1-802, MCA (a copy of which is attached) allows any party to a district court civil case to substitute two district judges, and in a criminal case, one district judge. The bill would require every party filing a motion for substitution to pay a fee of $100. However, there would be no charge for filing a motion for disqualification of a district judge for cause. The bill would only affect peremptory substitution of district judges without cause.

As an illustration of the cost of motions for substitution, I cite an instance where I drove to Libby to try a case for a judge who had been substituted. My mileage alone was about $120. There was, of course, the additional cost of a motel at $24 a night and meals at $14.50 a day. The cost of my lost time as a Judge, while driving one day to Libby and one returning to Helena, is not reimbursed or included as an actual expense. However, assuming the cost to the state for a district judge's time is $25.00 per hour and the round-trip mileage to Libby from Helena is 600 miles, there would be an additional cost of $300 out of the taxpayer's pocket. Thus, the cost of substituting the Libby district judge for a two-day trial was almost $500. It is only fair that the party who substituted that Libby judge should pay part of the cost of bringing in a judge from another district.

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District judges, who are called in when the presiding judge is substituted, are traveling all over the state. This bill will help defray the cost and expense of that travel and will discourage the filing of such motions for delay and frivolous reasons. For these reasons, I support House Bill 141.

SENATE JUDICIARY
EXHIBIT NO. 1

(2) collect, compile, and report statistical and other data relating to th business transacted by the courts and provide such information to the legi lature upon request;

(3) recommend to the supreme court improvements in the judiciary; and

(4) perform such other duties as the supreme court may assign.

History: En. 82-512 by Sec. 3, Ch. 396, L. 1977; R.C.M. 1947, 82-512.

3-1-703. Cooperation of court officers. All court officers, includir clerks of district courts, shall comply with requests made by the court admi istrator for information and statistical and financial data bearing on the bus ness transacted by the courts.

History: En. 82-513 by Sec. 4, Ch. 396, L. 1977; R.C.M. 1947, 82-513.

Part 8

Disqualification and Substitution of Judges Supreme Court Rule

3-1-801. Superseded. Sup. Ct. Order dated June 29, 1981.

History: En. Sup. Ct. Ord. dated Dec. 29, 1976; 34 St. Rep. 26; superseded, Sup. Ct. C dated June 29, 1981.

Compiler's Comments

Superseded Sections — Effective Date: Subsection 9 of the Supreme Court's order dated Dec. 29, 1976, provided in part: "This rule supersedes and is to be used to the exclusion of sections 93-901, 93-2906(4), 93-2907, 93-6602 95-1709, and 95-2010, R.C.M. 1947.

This rule shall be effective on March 1, 1 it to apply to all actions filed on or after t date."

3-1-802. Disqualification and substitution of judges — all court

DISQUALIFICATION OF JUDGES

Any justice, judge, or justice of the peace must not sit or act in any act or proceeding:

1. To which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity wit the sixth degree, computed according to the rules of law;

3. When he has been attorney or counsel in the action or proceeding any party or when he rendered or made the judgment, order or decis appealed from.

SUBSTITUTION OF JUDGES — PEREMPTORY CHALLENGES

Peremptory challenges shall apply only to District Court proceedings.

A motion for a substitution of a judge may be made by any party to a trict Court proceeding. In a civil case, each adverse party is entitled to substitutions of a judge. In a criminal case, the state and each defendar entitled to one substitution of a judge.

A motion for substitution of a judge shall be made by filing a wri motion for substitution reading as follows:

"The undersigned hereby moves for substitution of another judge for J _____ in this cause." The clerk of court shall immediately give n thereof to all parties and to the judge named in the motion. Upon filing notice, the judge named in the motion shall have no further power to a

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the cause other than to call in another judge, which he shall do forthwith, and to set the calendar.

The first district judge disqualified shall have the duty of calling in all subsequent district judges.

When a case is filed in a multi-judge district, it shall be the duty of the clerk of court to stamp the name of the judge to which the case is assigned on the face of the summons, order to show cause, or information and all copies thereof.

Whenever a judge is assigned a case for ten consecutive days and the attorneys of record on both sides have knowledge of the assignment for that period of time, and if during this time no motion for substitution of a judge is filed against him, all rights to move for substitution of a judge shall be deemed waived by all parties, unless the presiding judge disqualifies himself thereafter in which case the right to move for substitution of a judge is reinstated and the ten-day period starts running anew.

Whenever an acceptance of jurisdiction is filed by a new judge, it shall be the duty of the clerk of court to mail a copy of the acceptance of jurisdiction to the original judge who first had jurisdiction of the case, and a copy by certified mail with return receipt requested to each attorney of record. Service to an attorney may be made by delivery of a copy personally to the attorney, or by obtaining a written receipt from the attorney. Proof of service shall be stapled to the acceptance of jurisdiction in the file. The clerk of court shall contact the new judge accepting jurisdiction and request that judge to communicate with the judge having jurisdiction in the first instance, so that calendaring can be expeditiously handled.

When a new trial is ordered in any case, whether by order of the District Court or the Supreme Court, each adverse party shall be entitled to file one motion for substitution of a judge in the manner provided herein, whether or not that party has previously filed motions for substitution of a judge. Such motions must be filed:

a. If the new trial has been ordered by the District Court, within ten days after the time for appealing the order has elapsed.

b. If the new trial has been ordered by the Supreme Court, within ten days after notice of receipt of the remittitur has been received by the respective parties from the clerk of the District Court.

DISQUALIFICATION FOR CAUSE

This section shall apply to all District Court judges, justices of the peace, municipal court judges and to all judges acting as a Small Claims Court. All references to judge are meant to include a District Court judge, a justice of the peace, a municipal judge and a judge presiding under the Small Claims Act.

Whenever a party to any proceeding in any court makes and files a timely and sufficient affidavit that a judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein.

In the case of a district judge, another district judge shall be assigned by the chief justice of the Supreme Court to hear such disqualification proceedings. If an affidavit is against a justice of the peace, municipal judge or a judge presiding under the Small Claims Act, any district judge may appoint

another justice of the peace or municip
affidavit shall state the facts and the re
dice exists, and shall be filed not less
date of trial, or good cause shall be sh
time. It shall be accompanied by a certi
it has been made in good faith.

DIRECT CONTEMPT OF COURT:

None of the provisions of this rule sh
involving a direct contempt of court.

INDIRECT CONTEMPT OF COURT:

When a person is charged in a Distr
court, he shall be entitled to file one mot
manner provided herein, whether or n
motions for substitution of a judge. Such
days of the charge of indirect contempt
the court against which the contempt is
notify the chief justice of the Supreme C
trict judge to hear and decide the charge.

History: En. Sup. Ct. Ord. dated June 29, 1981.

Compiler's Comments

Former Rule Superseded — Effective Date: Supreme Court Order dated June 29, 1981, provided, in part, as follows:

"By the authority of Article VII, Section 2, of the 1972 Montana Constitution, this rule supersedes and is to be used to the exclusion of the rule on disqualification and substitution of judges adopted by Supreme Court Order dated December 29, 1976, and published as section 3-1-801, MCA.

This rule shall take effect on July 1, 1981."

Effect of Publication: Section 2, Ch. 1, L. 1979, which adopted the MCA, provided that publication of a Supreme Court Rule is done for the benefit of code users. The publication of this

Part 9 rese

Part 1

Judicial Nomination

3-1-1001. Creation, composition, A judicial nomination commission for the provide the governor with a list of cand vacancy on the supreme court or any dist composed of seven members as follows:

(a) four lay members who are neithe retired, who reside in different geographi whom is representative of a different whether actively so engaged or retired, w

another justice of the peace or municipal judge to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than twenty days before the original date of trial, or good cause shall be shown for failure to file it within such time. It shall be accompanied by a certificate of counsel of record stating that it has been made in good faith.

DIRECT CONTEMPT OF COURT:

None of the provisions of this rule shall apply to any person in any cause involving a direct contempt of court.

INDIRECT CONTEMPT OF COURT:

When a person is charged in a District Court with indirect contempt of court, he shall be entitled to file one motion for substitution of a judge in the manner provided herein, whether or not that party has previously filed motions for substitution of a judge. Such a motion must be filed within ten days of the charge of indirect contempt of court. In that event, the judge of the court against which the contempt is alleged to have been committed shall notify the chief justice of the Supreme Court who shall appoint another district judge to hear and decide the charge.

History: **En. Sup. Ct. Ord. dated June 29, 1981.**

Compiler's Comments

Former Rule Superseded — Effective Date: Supreme Court Order dated June 29, 1981, provided, in part, as follows:

"By the authority of Article VII, Section 2, of the 1972 Montana Constitution, this rule supersedes and is to be used to the exclusion of the rule on disqualification and substitution of judges adopted by Supreme Court Order dated December 29, 1976, and published as section 3-1-801, MCA.

This rule shall take effect on July 1, 1981."

Effect of Publication: Section 2, Ch. 1, L. 1979, which adopted the MCA, provided that publication of a Supreme Court Rule is done for the benefit of code users. The publication of this section should not be construed as a legislative attempt to readopt or promulgate the rule.

Cross-References

District Court presided over by Judge of other district, 3-5-111.

Multijudge districts, 3-5-403.

Municipal Court Judge pro tem, 3-6-204.

Disqualification of Water Judge or master, 3-7-402.

When Acting Justice called in, 3-10-231.

Expenses of Acting Justice, 3-10-234.

When substitute for City Judge called in, 3-11-203.

Procedure, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Part 9 reserved

Part 10

Judicial Nomination Commission

3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court. The commission shall be composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-17-87
BILL NO. H.B. 141

STANDING COMMITTEE REPORT

March 17 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 141

Third reading copy (blue color)

Create fee for filing motion for judge substitution in civil cases. Bardanouve (Mazurek)

Respectfully report as follows: That HOUSE BILL No. 141

~~DO PASS~~

~~DO NOT PASS~~

BE CONCURRED IN

Senator Joe Mazurek
Chairman.